

**Former Employee’s Credit for Engineering Work —
Use of Former Employer’s Firm Name and “Statement of Firm Principles”**

Case No. 14-10

Facts:

Engineer A is hired by PXL Engineering to serve as an associate engineer in State Y. Engineer B, a partner in PXL Engineering mentors Engineer A, and Engineer A eventually establishes himself within the firm as a generally well-regarded practitioner. PXL Engineering pays for Engineer A’s tuition to obtain a graduate degree, and Engineer B submits recommendations for Engineer A to become licensed as a professional engineer.

A few years later, Engineer A decides to establish his own engineering practice in State Z and decides to call the firm “PXL Engineering of State Z.” Engineer A’s firm has no affiliation with PXL Engineering located in State Y, but upon investigation, Engineer B observes that the website developed by PXL Engineering of State Z has strikingly similar “Statements of Firm Principles” to the ones included on PXL Engineering’s website. Engineer B contacts Engineer A regarding the name of his firm as well as his use of PXL Engineering’s “Statement of Firm Principles” on PXL Engineering of State Z’s website.

Questions:

1. Was it ethical for Engineer A to call his firm “PXL Engineering of State Z”?
2. Was it ethical for Engineer A to use similar “Statements of Firm Principles” on PXL Engineering of State Z’s website?

NSPE Code of Ethics References:

- Section I.5. Avoid deceptive acts.*
- Section I.6. Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.*
- Section II.4.a. Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.*
- Section II.5.a. Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates’ qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers, or past accomplishments.*
- Section III.1.e. Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.*
- Section III.9. Engineers shall give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.*
- Section III.9.a. Engineers shall, whenever possible, name the person or persons who may be individually responsible for designs, inventions, writings, or other accomplishments.*

Discussion:

The issue of giving credit (and responsibility) to the appropriate professional engineers involved in a project goes to the very heart of the professional issues relating to personal responsibility and individual accountability.

As one example, BER Case No. 64-7 involved a professional engineer who was employed as an assistant sanitary engineer in a state health department. The engineer was responsible for the administration of certain programs, which required approval of plans for proposed water supply and sewage treatment facilities and for the issuance of permits for such projects, as prescribed by state law. The engineer's immediate supervisor was the district sanitary engineer, also a professional engineer. The policy and practice of the office was that all approval of plans and issuance of permits were under the signature of the district sanitary engineer, although the assistant sanitary engineer performed the actual engineering review in the great majority of applications. The office policy also provided that when the district sanitary engineer was absent, the assistant sanitary engineer would review the plans and applications for permits and, after approval, sign the name of the district sanitary engineer, even though the district sanitary engineer had not seen or reviewed the documents. In deciding that it was not ethical for the assistant sanitary engineer to sign the name of the district sanitary engineer to engineering documents, the Board noted that the thrust of NSPE Code of Ethics is that individual accomplishments and the assumption of responsibility by individual engineers should be recognized by other engineers. This principle is not only fair and in the best interest of the profession, but it also recognizes that the professional engineer must assume personal responsibility for his decisions and actions. The Board noted that it is not unusual for the engineer in charge to sign his name and title to engineering documents that are prepared or reviewed by his subordinates under his supervision. There is no criticism of this practice because it is based on the requirement that the engineer attaching his signature is familiar with and has checked the work involved. In this case, however, the facts are that the assistant sanitary engineer on occasion reviewed the engineering documents on his own responsibility and without the supervision or verification of the district sanitary engineer, the Board said. It is obvious that the assistant sanitary engineer took sole responsibility for the decision to approve the plans or authorize the issuance of a permit. On that basis, he alone should have signed the engineering documents.

The Board saw no objection, however, in the interests of clarity and continuity of authority, for the approval to indicate by stamp or printing the name of the district sanitary engineer, provided his name is followed by the name and signature of the assistant sanitary engineer. This will indicate that the approval is under the general authority of the district sanitary engineer and that the assistant sanitary engineer is acting within the scope of a delegation of authority to pass professional judgment on his own responsibility.

The Board noted that the matter of credit for engineering work is a factor in this consideration but is secondary to the more important principle of a clear indication of professional responsibility.

The NSPE Board of Ethical Review's treatment of this case is very instructive in considering the present case. In BER Case No. 64-7, there appears to be nothing to indicate any limitation on the ability of Engineer A to sign and seal the engineering drawings and assume personal responsibility for the work in question. The salient ethical issue is the duty of the professional engineer to assume personal responsibility and be accountable for the work under his or her direct control and personal supervision. Issues related to credit given are considered a secondary matter.

More recently in BER Case 07-4, Engineer A, a licensed professional engineer, worked for Engineer B, the owner of a geotechnical/construction materials firm for 10 years. Over the 10-year period with the firm, Engineer A achieved two engineering excellence awards for projects for which Engineer A had primary design responsibility and signed and sealed the engineering documents. The firm's website depicted these two projects without Engineer A's name associated with either one and included photographs of Engineer B and other engineers in the firm beside the project—implying, but not specifically stating, that these individuals were responsible for the projects. The Board decided that (1) in the absence of some compelling reason, it was unethical for Engineer B to fail to include Engineer A in association with the two projects; and (2) in the absence of some compelling reason, it was unethical for Engineer B to include a photograph on the firm website implying that Engineer B and other individuals were responsible for the projects. Said the Board, "it should be stated that on the basis of fairness and equity, it would seem reasonable and justified that an engineer who has primary design responsibility and signed and sealed the engineering documents should be given due and appropriate recognition for the engineer's contributions to the work. Without attempting to get involved with specific personnel decisions, management prerogatives, or the unique circumstances that might be involved in this or similar matters, it would seem that Engineer B would want to provide appropriate visible recognition for Engineer A's achievements and accomplishments for the benefit of the firm's clients. This concept is clearly embodied in the language of the NSPE Code Section III.9.a." The Board continued its analysis by noting, "The Board recognizes that companies and firms may have different methods of recognizing achievements and accomplishments for marketing, firm identity, and other purposes. However, the Board believes that the manner in which firms today assign credit and recognition should in some measure be connected to actual responsibility for the work. Where there is no reasonable connection between the actual responsibility/accountability for the engineering work and the credit/recognition provided, the Board is concerned that a misrepresentation could occur that would be detrimental to the interests of potential clients and ultimately the public. Unless there is some unique or compelling business reason to do otherwise, it is the Board's review that consistent with

the NSPE Code of Ethics, credit and recognition should follow responsibility and accountability.”

While the facts in the aforementioned cases may be somewhat different than the present case, the general reasoning contained in the earlier cases clearly apply to the present case. Engineer A is expressly stating and implying to former clients and prospective clients that Engineer A’s firm is somehow associated with his former firm, PXL Engineering. In addition, Engineer A is also attempting to use the identity as well as strikingly similar key branding statements and content from his former firm PXL Engineering to promote Engineer A’s new firm. This conduct appears to be in clear violation of both the letter and the spirit of the NSPE Code of Ethics. Engineers have a professional and ethical obligation to respect and give proper due to the proprietary rights and interests of other parties, including professional colleagues.

In passing, the Board notes that Engineer A’s conduct strikes the Board as especially egregious, particularly in view of the generosity exhibited by Engineer B and PXL Engineering in supporting Engineer A professionally (additional education, professional licensure). The Board recognizes that there are always two sides to every situation, and as demonstrated by BER Case 07-4, employed engineers are sometimes the recipient of unethical management conduct. However, based on the facts in this case, it appears that Engineer A’s actions constituted gross violation of acceptable standards and may also bring about serious legal issues for Engineer A.

Conclusions:

1. It was unethical for Engineer A to call his firm “PXL Engineering of State Z.”
2. In view of the use of the PXL identity, it was unethical for Engineer A to use a strikingly similar “Statements of Firm Principles” on PXL Engineering of State Z’s website. In addition, Engineer A’s action may raise serious legal issues for Engineer A.

Board of Ethical Review:

Robert J. Andreoli, P.E.
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Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the NSPE Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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